National Association of Broadcast Employees and Technicians, AFL-CIO, CLC *and* Metromedia, Inc. and International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada. Case 31-CD-201

March 27, 1981

DECISION AND ORDER

On November 12, 1980, Administrative Law Judge James S. Jenson issued the attached Decision in this proceeding. Thereafter, Respondent, National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (hereinafter Respondent or NABET), filed exceptions and a supporting brief, and the Employer filed a brief in answer to Respondent's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge found, and the parties do not dispute, that Respondent filed grievances on June 6 and December 3, 1978, pursuant to section 6.02, article VI,[1] of a collective-bargaining agreement in effect since June 1, 1978, between Respondent and the Employer. The grievances alleged that the Employer had violated the terms of the collective-bargaining agreement by assigning live election-eve broadcasting by use of portable electronic cameras to employees of the Employer represented by the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada[2] rather than to employees represented by Respondent. The Employer refused to arbitrate the grievances, maintaining that the work claimed by Respondent had been the subject of a prior determination by the Board and had been assigned to employees represented by IATSE in an award issued pursuant to Section 10(k) of the National Labor Relations Act. Following the Employer's refusal to participate in the contractual grievance procedure, Respondent filed suit in the United States District Court for the Central District of California to compel arbitration as provided in Section 301(a) of the Act.[3]

After taking extensive evidence regarding the work that had been made the subject of the grievances filed by Respondent and after reviewing portions of the transcript of the Board's prior 10(k) proceeding, the Administrative Law Judge concluded that the work was covered by the Board's earlier Decision and Determination of Dispute and was, therefore, as the Employer argued, properly assigned to employees represented by IATSE. Upon that basis, the Administrative Law Judge concluded that Respondent's filing of grievances and of a Section 301 suit to compel arbitration demonstrated a refusal to abide by the Board's prior 10(k) award and constituted restraint or coercion within the meaning of Section 8(b)(4)(ii)(D) of the Act. We disagree with the Administrative Law Judge that Respondent's conduct amounted to a violation of the Act.

The record discloses that on July 30, 1976, the Board issued a Decision and Determination of Dispute in which it awarded to the Employer's employees who were represented by IATSE "the operation of a portable hand-held electronic videotape camera and related equipment for news, sports for news, and news special events gathering purposes."[4] While the 10(k) proceeding was pending before the Board, the National Association of Broadcast Employees and Technicians, AFL-CIO, CLC, Respondent herein, sought court-ordered arbitration of the same jurisdictional dispute, and the Employer successfully intervened to secure an order for tripartite arbitration. After the Board's Decision and Determination of Dispute was issued, NABET informed the Employer that, if the Employer sought to avoid the court-ordered arbitration, NABET would strike immediately. Thereafter, on June 10, 1977, the Board held that by refusing to comply with the Board's earlier Decision and Determination of Dispute, by encouraging employees of the Employer to engage in a strike or work stoppage, and by threatening the Employer with a strike with an object of forcing reassignment of work, NABET had violated Section 8(b)(4)(ii)(D) of the Act. The Board ordered NABET to cease and desist from its unfair labor practices.[5] So far as we have been made aware, Respondent complied fully with that Order, and we have not, until this proceeding, had occasion to consider related disputes at the Employer's facility.

Since our original Decision and Determination of Dispute in 1976, the Employer and Respondent have entered into a new collective-bargaining agreement, effective June 1, 1978. In June 1978, and again in November 1978, the Employer sent camera crews to cover election-eve events at candidates' political headquarters in the Los Angeles

[1] Art. VI, sec. 6.02, is attached hereto as an appendix.

[2] Hereinafter IATSE.

[3] Docket No. CV-79-02110 WMB (Gx) (filed June 6, 1979).

[4] *International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Metromedia, Inc.)*, 225 NLRB 785, 786 (1976).

[5] *National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (NABET) (Metromedia, Inc.)*, 230 NLRB 75 (1977).

area. The camera crews used hand-held portable electronic cameras capable of both videotaping and transmitting live audio and visual signals. The camera operators were employees represented by IATSE. On both nights in question, the cameramen performed both live broadcasting and videotaping at the campaign headquarters; the cameras were used in their live broadcasting capacity to scan the events from specially constructed, stationary, raised platforms and in their videotaping capacity when the camera operators moved about the floor with news reporters who were conducting interviews.

Respondent filed grievances immediately following each of the instances described above. Respondent did not question the Employer's authority to assign the *videotape* operations conducted on election night to employees represented by IATSE, but it did maintain that, under the Trade Jurisdiction Article of the new collective-bargaining agreement, operation of the cameras during the *live broadcasting* should have been assigned to employees whom it represented. When the Employer refused to participate in the contractual grievance procedure, Respondent instituted proceedings in Federal district court to compel arbitration.

The sole issue we consider here is whether Respondent's conduct in filing and maintaining grievances and in initiating court proceedings to compel arbitration amounted to a violation of Section 8(b)(4)(ii)(D) of the Act. At the outset, we must determine whether live broadcasting was clearly encompassed within our earlier Decision and Determination of Dispute.

Our 1976 10(k) award was somewhat unusual in two respects. First, although the work in dispute was narrowly defined as "the operation of a portable hand-held electronic *videotape* camera and related equipment,"[6] the purpose of the work, "news gathering," was the focus of the Board's inquiry and the primary basis upon which the award rested.[7] It was clear to us then that both employees represented by IATSE and employees represented by NABET possessed the ability to perform the mechanical operation of the videotape camera; and we have been presented with no evidence to the contrary in the present controversy. The work in dispute was awarded to employees represented by IATSE not because they possessed greater mechanical ability but because, in our judgment, those employees were better trained than NABET engineers to exercise the largely self-directed photojournalistic expertise necessary to cover fast-breaking news events outside the studio. That our assignment of the operation of videotape equipment was supported almost exclusively by reasoning capable of larger application created a certain amount of ambiguity in the scope of the award. Then, too, our award rested at least in part on our understanding of the technological methods available to the Employer in 1976. Evidence of live broadcasting was minimal, for example, and evidence relating to microwaving was excluded because the Employer was not using such methods in connection with portable cameras at the time. In fact, we specifically noted in our prior award that at that time the Employer intended to use the videotape camera to obtain film for *delayed* broadcast. Also, unlike most such awards, the 10(k) award in question was of apparently limitless duration and, in an industry in which technological advances occur frequently, it was perhaps to be expected that the scope of the award might be subject to conflicting interpretations by the parties in 1978.

The predictable conflict has occurred, largely because Respondent perceives a distinction between the operation of the camera and the news-gathering purpose thereof, and the Employer does not. We note that the interpretations of the award by both Respondent and the Employer are plausible, and that they created sufficient ambiguity in the application of the 10(k) award for the Administrative Law Judge to take additional evidence before determining its scope. We find it unnecessary to comment on the propriety of such a procedure, just as we express no opinion whether the Administrative Law Judge was correct in concluding that live broadcasting by use of portable electronic cameras was within the scope of the original 10(k) award. Our concern here is the object of Respondent's conduct in filing the grievances and the Section 301 lawsuit, and for that purpose it is sufficient that the interpretation of the 10(k) award was open to reasonable doubt by the parties affected by it, because of its ambiguity and because of changed circumstances resulting from the passage of time.

In addition, we find it relevant that Respondent filed the grievances relating to live broadcasting under a contract executed almost 2 years after the 10(k) award, that Respondent's grievances are colorable under the contract, and that the contract itself does not, in our judgment, represent an attempt by either Respondent or the Employer to circumvent the 10(k) award to the detriment of employees represented by IATSE. A 10(k) award is

[6] *International Alliance of Theatrical Stage Employees (Metromedia, Inc.), supra* at 736 (emphasis supplied).

[7] We found that the traditional factors of collective-bargaining agreements and certifications and area, craft, and industry practice were inconclusive. We found that the factors of job impact and economy and efficiency of operation favored assignment of the work to employees represented by IATSE, based upon the technology then available to the Employer. As we note elsewhere in this Decision, however, the technological level of this industry is subject to rapid change, and our prior Decision did not, therefore, stress the factors of job impact and efficiency.

not intended to halt the normal processes of good-faith bargaining between employers and unions. Because substantial time has elapsed since issuance of a Decision and Determination of Dispute that did not clearly address the allocation of live broadcasting work, we are not prepared to conclude that the parties were prohibited from negotiating on the subject. The contract negotiated by these parties not only provides a colorable basis for Respondent's grievances but also appears to accommodate our prior award of videotaping to employees represented by IATSE.[8] Under these circumstances, we cannot conclude that the documentary evidence alone supports the Administrative Law Judge's conclusion that Respondent either has refused to comply with our prior Decision and Determination of Dispute or has restrained or coerced the Employer within the meaning of Section 8(b)(4)(ii)(D) of the Act. Moreover, the record contains no other evidence that Respondent intended to do so.

In evaluating the evidence of coercive conduct presented by this record, we are mindful that the Federal labor policy strongly encourages resolution of labor disputes through contractual grievance-arbitration procedures.[9] The Board does not lightly interfere in conflicts at the workplace when an employer and a union have established an adequate mechanism for private resolution. Nor do we exercise our authority under the Act in a manner that needlessly restricts a party's access to judicial remedies.[10]

Certainly we do not suggest that filing a grievance and a Section 301 suit can never constitute an unfair labor practice,[11] but when, as here, a respondent pursues its legal remedies for an arguably meritorious claim under a properly negotiated collective-bargaining agreement and the record fails to disclose extrinsic evidence of threats, restraint, or coercion of the employer, we are unable to conclude that it has done more than its status as employee representative authorizes. Accordingly, we shall dismiss the complaint against Respondent in this case.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

JAMES S. JENSON, Administrative Law Judge: This case was heard in Los Angeles, California, on December 3 and 19, 1979, based on a complaint issued on August 20, 1979, pursuant to a charge and first amended charge filed on June 15, 1979, and July 18, 1979, respectively. The complaint alleges that Respondent has violated Section 8(b)(4)(ii)(D) of the National Labor Relations Act, as amended, herein called the Act, by failing to honor and abide by the National Labor Relations Board's Decision and Determination of Dispute finding that employees represented by International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, herein called IATSE, were "entitled to perform the work of news gathering by use of the Akai electronic camera," by the filing of grievances claiming the assignment of election news coverage, and by filing a lawsuit seeking to compel the Employer to submit the grievances to arbitration, with the object of forcing or requiring the Employer to assign the work to its members rather than to employees who are members of, or represented by, IATSE. In its answer, Respondent denied (1) that the Employer utilized employees represented by IATSE to perform the work of "the operation of a portable hand-held electronic videotape camera and related equipment for news, sports for news and news special events gathering purposes" as alleged in paragraph 5(b) of the complaint; (2) that, in June and November 1978, the Employer utilized employees represented by IATSE to perform the work of gathering election news through the operation of portable hand-held electronic videotape cameras and related equipment; (3) that Respondent and IATSE have a jurisdictional dispute over the operation of portable hand-held electronic videotape cameras and related equipment; (4) that Respondent has not been certified nor has the Board issued an order determining that Respondent is the bargaining representative of the employees performing the work described immediately above; (5) that in *International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Metromedia, Inc.)*, 225 NLRB 785 (1976), the Board found that employees represented by IATSE are entitled to perform the work described in (3) above; and (6) that Respondent has refused to honor and abide by the Board's award in the case reported in 225 NLRB 785,

[8] See sec. 6.02 (c)(ii) of the contract in the attached appendix. [Omitted from publication.]

[9] See *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).

[10] See *N.L.R.B.* v. *Nash-Finch Company, d/b/a Jack & Jill Stores*, 404 U.S. 138, 142 (1971); *Clyde Taylor, d/b/a Clyde Taylor Company*, 127 NLRB 103, 109 (1960).

[11] To the contrary, under circumstances not present in this case, we have so held. In *Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Pacific Maritime Association)*, 224 NLRB 801 (1976), we found that respondent had violated Sec. 8(b)(4)(ii)(D) by filing grievances following an unambiguous 10(k) award when (1) the grievances were filed against neutral employers in an attempt to force them to pressure the primary employer to reassign the work in dispute to employees represented by respondent; (2) respondent's agent had made statements clearly indicative of an impermissible purpose in filing the grievances; (3) the grievances filed were obviously without merit; and (4) respondent's contract with the neutral employers against whom the grievances were filed permitted respondent to strike and picket if the grievances were not satisfactorily resolved. See also *United Food and Commercial Workers International Union, District Union 227, AFL-CIO (The Kroger Company)*, 247 NLRB 195 (1980).

with the object of forcing or requiring the Employer to assign said work to employees who are its members rather than employees represented by IATSE. Contending evidence regarding the use of such hand-held cameras for microwave or transmission of signals for live broadcast or for recording on videotape at sites other than at the place of the news story was excluded from consideration by rulings of the hearing officer conducting the earlier 10(k) hearing, Respondent contends that the Board has never decided whether the Employer can assign to IATSE represented employees the operation of hand-held cameras to microwave or transmit signals to the studio for the purposes of live broadcasting, functions which have always been performed exclusively by employees represented by Respondent. Respondent contends that, as engineers represented by it have exclusively performed the funciton of live broadcasting with hand-held cameras, the transfer of such work and functions of IATSE cameramen would result in the loss of jobs for its engineers. It contends that live broadcasting of election coverage has always been considered "program" material under its jurisdiction, as distinguished from "news." Contending that a new 10(k) proceeding should be held, Respondent claims a decision here based on the Board's earlier 10(k) proceeding would be a denial of due process, and moved to dismiss the complaint "since the Board has not proceeded pursuant to Section 10(k) of the Act." Pointing out that the grievances over which the instant dispute arose were filed on June 6 and December 3, 1978, more than 7 months prior to the filing of the charge herein, Respondent contends the charge should be dismissed on the basis of Section 10(b).

All parties were afforded full opportunity to appear, to introduce evidence, and to examine and cross-examine witnesses. Briefs were filed by the General Counsel, the Employer, and Respondent and have been carefully considered.

Upon the entire record in the case, and from my observation of the witnesses and their demeanor, and having considered the post-hearing briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

It is admitted and found that the Employer is a Delaware corporation engaged in the operation of KTTV, one of its 20 radio and television stations located throughout the United States. The Employer advertises national brand products, subscribes to national wire services, and derives annual gross revenues from said radio and television stations exceeding 500,000 per year. Accordingly, it is found that the Employer is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

It is admitted and found that Respondent and IATSE are labor organizations within the meaning of Section 2(5) of the Act.

III. ISSUES

1. Whether live coverage of election headquarters by IATSE represented employees operating electronic minicameras on June 6 and November 7, 1978, was "news gathering" within the meaning of the Board's Determination of Dispute in *Metromedia, supra.*

2. If so, whether Respondent's conduct in filing grievances claiming the assignment of said work, and Respondent's filing a lawsuit to compel arbitration of those grievances, violated Section 8(b)(4)(ii)(D) of the Act.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Employer owns and operates television station KTTV in Los Angeles, California. On January 6, 1976, the Employer filed a charge against IATSE in Case 31-CD-161, alleging that IATSE had violated Section 8(b)(4)(ii)(D) of the Act by engaging in certain conduct with an object of forcing or requiring the Employer to assign the operation of the minicam to employees represented by IATSE rather than of employees represented by Respondent herein. Pursuant to Section 10(k) of the Act, a hearing was duly held in which all parties, including Respondent, fully participated. On July 30, 1976, the Board issued its Decision and Determination of Dispute, wherein it concluded that Metromedia's employees represented by IATSE "were entitled to perform the work of news gathering by use of the Akai electronic camera minicam." In accordance with the Board's Rules and Regulations, the Regional Director for Region 31, dismissed the charge against IATSE In that case. Thereafter Respondent herein advised the Employer that, if the Employer sought to delay court-ordered tripartite arbitration of the same work dispute, Respondent would "immediately strike and refuse to handle and process any and all videotape produced by the mini-camera when such camera and videotape equipment is operated by an employee or employees represented by a union other than NABET" (Respondent herein). Thereafter, the Employer filed a charge against Respondent in Case 31-CD-173, and a complaint issued alleging NABET violated the Act by threatening a strike and refusal to handle and process videotape produced by the minicam when it and related equipment were operated by employees represented by IATSE. The complaint allleged Respondent had failed and refused to honor or abide by the Board's Decision and Determination of Dispute in *Metromedia, Inc., supra,* in which the Board awarded the work of news gathering by use of the minicam to the Employer's employees represented by IATSE, with the object of forcing or requiring the Employer to assign the operation of the minicam to employees represented by Respondent rather than to employees represented by IATSE. On March 2, 1977, the Board approved a stipulation of the parties, and, pursuant to a motion to that effect, transferred the proceeding to the Board. Stipulated to the Board, *inter alia,* was the offical transcript and exhibits of the 10(k) proceeding in Case 31-CD-161, and the Board's Decision and Determination of Dispute. Respondent argued in that case, *inter alia,* that the Board

had no authority to proceed against it in Case 31-CD-173, unless a 10(k) hearing was held, and that the Board could not rely on the decision in Case 31-CD-161 as the basis for issuing a complaint against it, since Respondent was not the Union against whom charges had been filed in that case. Noting that Respondent had participated fully in the prior 10(k) hearing and that the issues therein were fully litigated and carefully considered by the Board, the Board concluded there was "no reason to go through the involved procedure of a second 10(k) hearing merely to arrive at the same conclusion we have already reached in Case 31-CD-161." Accordingly, it found that Respondent violated Section 8(b)(4)(ii)(D) of the Act by refusing to comply with the Board's Decision and Determination of Dispute in that case, as alleged in the complaint.[1]

The instant matter also involves the operation of the minicam.[2] The parties stipulated that the grievances, as well as the lawsuit which was filed seeking to compel arbitration of the grievances, were founded upon a claim by Respondent that Respondent's represented employees should have been operating the minicam and related equipment when used for live broadcasting during election coverage on the two nights in question.[3]

B. *The Instant Dispute*

In June and November 1978, Respondent's news department assigned IATSE news crews utilizing the minicam to cover "live" the election news at various candidates' headquarters located in hotels in the Los Angeles area.[4] In addition to the usual minicam crew consisting of a cameraman, a sound man, a reporter, an IATSE coordinator or stage manager,[5] and either one or two NABET represented engineers were also assigned to each hotel. The coordinator-stage manager was in telephone contact with the studio and gave the minicam crew their "cues" for going "live." He also ran errands and performed other functions not necessarily essential to the program. It is clear from the record that neither the coordinator-stage manager nor anyone else at either the studio or at the hotel election headquarters gave any direction to the news crews as to what they should cover or how shots were to be taken. Instead, the minicam crew appears to have utilized what the Board in the 10(k) determination referred to as their news-gathering abilities in determining what shots it would make. The NABET represented engineers did not operate minicams, but instead operated certain electronic equipment, such as an oscillascope and high monitored the picture during live transmission. On the evenings in question, the minicam was used principally to transmit live video and audio signals from election headquarters to the KTTV studio by means of a cable provided by TELCO, a common carrier. While there was testimony regarding the potential microwaving of signals back to the studio, it is clear that no microwave equipment was operated by any of the Employer's employees on the nights in question, none of the signals were in fact microwaved by a common carrier, nor does the Employer contemplate purchasing microwave equipment.[6] On both evenings in question, the minicam crews operated the minicams mounted on a tripod (stationary mode) for live coverage from specially constructed raised platforms which were also used by the other television stations covering the events. On June 6, at both locations, the crews went portable by disconnecting the minicams from the TELCO cable used for live transmission, connected the minicams to the video and audio tape recorders, and operated in a mobile shoulder-mounted fashion while they went down on the floor and taped interviews and events. The tapes were physically transmitted back to the studio and handled in the same manner as any other nonlive news story. Except for receiving "cues" as to when live broadcasts were to begin and end, the work performed by the minicam crews and the skills required of them while shooting live coverage on election evening were the same as those used in videotaping. The format and context of the material shot were planned by the minicam crew itself. Thus, it is clear the work performed by the cameramen in news gathering, including election-eve coverage, is no different whether the minicam is used for live broadcasting or for videotaping.[7]

Prior to the introduction of the minicam, IATSE represented crews dispatched by the news department performed election news coverage with film cameras which are now used as backup for the minicams. After the introduction of the minicam, they videotaped election news for later presentation, using both the tripod and shoulder mount for shooting. At the time of the 10(k) hearing, IATSE cameramen had used the minicam only for the purpose of videotaping at the location of the news event and not for "live" presentation.

As noted by the Board in the 10(k) Decision and Determination Dispute, camera work for programs taped in the Employer's studio has been assigned to engineers represented by NABET who operate:

> large, immobile, electronic cameras mounted on pedestals. For most in-studio programs . . . the Employer utilizes a multiple-camera operation which allows it to record shots from different angles. Thus, no single cameraman is responsible for capturing an entire program.

[1] 230 NLRB 75 (1977).

[2] The Akai minicam involved in the 10(k) proceeding has been replaced by the RCA T-76 minicam. The parties stipulated there was no substantial difference between the two minicams.

[3] The parties further agree that the grievances do not cover any videotape coverage that may have taken place on the evenings in question.

[4] The only other occasion the IATSE Minicam crew has been assigned to transmit "live" coverage was in September 1978, the initial day of Los Angeles school bussing. No grievance was filed by Respondent regarding that assignment.

[5] News Director Riley and NABET Engineer Jacobsen characterized the latter individual as stage manager. Walker, a sound man and cameramen, and Moore, another cameraman, testified there as a coordinator, but no state or production manager. Cameraman Josea characterized the same individual as production manager, or "gofer." Regardless of the title, there is little dispute regarding his functions set forth herein.

[6] There was evidence the Employer owned some antiquated microwave equipment but that it had never been used with the minicam.

[7] There was unrefuted testimony that videotape made by the minicam and audiovisual recorder can also be transmitted to the studio by cable or microwave.

> The engineers function as part of a production crew consisting of a director or producer, audio engineer, lighting director, technical director, and video controller. The director tells each cameraman what shots he wants them to get, and then he coordinates all cameras for a single program.
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> On occasion, the electronic camera production crew has been dispatched to various remote locations outside the studio to cover such prescheduled events as sporting events or election returns, or to cover on-going news stories such as natural disasters or an airplane hijacking. The method of operation at remote locations is similar to that in the studio, with several cameras placed in stationary positions. The camera work is supervised by the same people comprising the studio production team.

Nothing inconsistent with the foregoing was presented in the instant hearing. Thus, as noted, NABET represented engineers have historically been dispatched as cameramen in production crew to cover election returns, and "On a very infrequent basis . . . have operated portable hand-held electronic cameras in the field, either with or without supervision."

As noted earlier, the Respondent filed two grievances over the Employer's assignment of the operation of the minicam to the news department employees represented by IATSE, and sought, through a suit filed in the Federal District Court, to compel Metromedia to arbitrate the two grievances.

Conclusions

It is apparent from the foregoing that there now exists, as the Board found in the 10(k) proceeding, claims for the same work by competing groups of employees. The question is therefore whether the work in dispute is covered by the Board's earlier Determination of Dispute. If not, the complaint must be dismissed. If the work is covered, then the question is whether the conduct engaged in by the Respondent is unlawful.

I have carefully reviewed the transcript in this case, the pages of the transcript in the 10(k) proceeding which the parties have referred me to, and the briefs, and conclude the work in dispute—the operation of the minicam for election evening-news gathering, whether for live transmission or recording on videotape—is covered by the Board's earlier Decision and Determination of Dispute. The Board concluded in the 10(k) Decision that the employees represented by IATSE "are entitled to perform the work of news gathering by use of the . . . electronic camera." It is not disputed, and the record herein so shows, that election evening news coverage has been a function of the Employer's news department and that it constitutes news gathering. Rather, Respondent contends that, since the Board made no reference to live broadcasting in the 10(k) determination, it was obviously "deemed irrelevant" in the Decision and Determination of Dispute. In my view, the Board was presented with sufficient evidence on the subjects of election evening news coverage and live broadcasting, including microwaving, in the 10(k) proceeding, that, had it intended to make an exception to the assignment of "the work of news gathering by use of the . . . electronic camera" to IATSE represented employees, it would have specifically so stated. In this regard, the transcript of the 10(k) hearing discloses testimony on the following subjects:

> Page 48–49—NABET engineers have covered "major news events," once or twice a year, including "election night" at City Hall, and hijacking at the International Airport using pedestal type cameras and including a regular complement of production and engineering personnel.
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> Page 70–72—Election coverage is a news department function; however, if it required changing the regular programming, coordination with the program department would be required. News department has responsibility for election events.
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> Page 100–104—Three years prior to the 10(k) hearing, a NABET crew microwaved an airport hijacking incident back to the television station where it was recorded. Election night coverage, including interviews with candidates and tabulation of results, are "run by the news department." Such coverage was videotaped by an IATSE cameraman, together with a technical director, audio man, floor engineer, and "sometimes a stage hand plus the talent." A "film camera crew" (IATSE) is "very mobile, operating independently," roaming through the crowd chasing politicians.
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> Page 67–171—Engineering department has no responsibility with gathering news in the field. NABET employees operate cameras in studios and in remotes for sporting events, election returns, and "special events of that type." Their basic camera is the Norelco PC70, a 140 pound pedestal-type stationary camera which can be moved about by "dollies or crane pushers." They are capable of both videotape recording and live coverage. Until a year prior to the 10(k) hearing, NABET engineers also operated a hand-held PCP-90 camera (page 190—taken out of service), weighing about 40 pounds, excluding lens and backpack. While equipped for use with batteries, it had never been used with them. It was used on a stage for special effects and maybe half a dozen times under the news department for hijacking and other similar news events. NABET engineers exercise no journalistic or editing judgment and have no responsibility for ferreting out news stories.
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> Page 177—RCA T-76 and Akai cameras both capable of live broadcasting. There must be an FCC licensed operator at either receiving or transmitting end to transmit by microwave.
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> Page 186–188—Remote programs, such as sporting events, can be either tape recorded on the spot or microwaved back to the studio.
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> Page 189–190—Prior to the advent of the videotape camera, "many years ago," NABET crews used electronic cameras to cover news events which were put on live.

Page 193-196—PCP-90 (which has been taken out of service) was used for microwaving with "old type microwave equipment," but not with "state of the art microwave equipment." "Any camera can be hooked to a microwave." For microwaving, licensed operator is required at either transmitting or receiving end. A license is not required to operate the minicam, but one is required to operate microwave equipment. "When the state of the art is such," the Employer will buy microwave equipment and microwave from the minicam.

Page 217-219—The Employer did not at that time contemplate that there would be any microwave transmission from the camera to the KTTV videotape room, but should it occur, the necessary duties would be performed by the cameraman, if qualified and he possessed the required FCC license. If not, a NABET engineer would be assigned. Can also microwave directly to the transmitter on Mount Wilson and onto the air live.

Page 275-276—Employer has a microwave facility in a truck which can be used to go "live" with the "Furnzee" camera. The microwave equipment is separate from the camera. The Employer attorney's objection to further questions about microwave on ground Employer didn't intend to have any microwave transmission, and since it had been stated that microwaving would be done by a person with an FCC license, and if none available among IATSE employees, then by a NABET engineer, sustained.

Page 347-348—Testimony by ABC television cameraman-engineer regarding operation of hand-held Ikigami camera which has capability of taping and microwaving and doing both at the same time. Employer counsel's objection to further questioning on ground testimony irrelevant, was sustained. Respondent counsel's prediction "that KTTV will be microwaving and that this is a NABET function."

Page 407-420—Testimony by NABET engineer regarding coverage of special events in the field commencing in the early 1950's, prior to the advent of videotaping, which were transmitted by microwave. Prior to videotaping, all election stories were microwaved for live showing by NABET engineers. From early 1950's, had been assigned to election coverage with a variety of cameras. Has also covered 20 to 30 disasters such as fires, floods and earthquakes. About 1968, microwaved picture from a PCP-90 camera operated by NABET cameraman. Film cameras were also present at almost all major events. (Much of testimony predated acquisition of KTTV by the Employer.)

Page 444-451—NABET cameramen used for news gathering purposes in connection with disasters and election evening coverage. In most cases, a director was either present or in the area. Operated with two other NABET engineers in a mobile unit.

It is clear from this record that there is no difference between the technical operation of the minicam when it is videotaping and when the picture it takes is transmitted live to viewers through a cable connected to a common carrier or by microwaving. The manner in which the common carrier transmitted the picture taken by the minicam has no bearing on the Board's 10(k) Decision. It is further clear that IATSE represented minicam operators have never operated any microwave or other similarly purposed equipment capable of transmitting directly signals from the minicam for live broadcasting. It is also clear that microwaving is but one of several means by which either a live or taped picture can be transmitted from one place to another for either live or delayed broadcasting, and that the microwave equipment is separate and apart from the minicam.

As the Board has found that employees represented by IATSE "are entitled to perform the work of news gathering by use of the . . . electronic camera," as the Board's Decision and Determination of Dispute did not exclude election news or live coverage from its determination, and as there is no question but what election evening coverage, whether captured by videotape or for live broadcasting, is news gathering, I conclude and find the dispute herein is covered by the Board's earlier Decision and Determination of Dispute in Case 31-CD-161.

It follows from the above that, as alleged in the complaint, at all material times, Respondent and IATSE have had a jurisdictional dispute over which employees would gather election news through the operation of the minicam; that Respondent has neither been certified as the collective-bargaining representative of the employees gathering election news with the minicam, nor has the Board determined Respondent is the bargaining representative of said employees; that on July 30, 1976, in *International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Metromedia, Inc.)*, 225 NLRB 785 (1976), the Board issued its Decision and Determination of Dispute finding that employees represented by IATSE are entitled to perform the work of gathering election news through the operation of the minicam. It further follows that, by filing and maintaining the grievances over the assignment of said work to IATSE represented employees, and by filing a lawsuit in the United States District Court seeking to compel the Employer to submit the grievances to arbitration, Respondent has failed and refused to abide by the Board's award in the 10(k) hearing, and continues to demand that the Employer assign said work to employees represented by Respondent rather than to employees represented by IATSE, and that an object of the acts and conduct of Respondent has been to force or require the Employer to assign the work of gathering election news by use of the operation of portable hand-held electronic cameras to employees who are members of Respondent rather than to employees who are represented by IATSE. Through its conduct, Respondent has sought to relitigate issues previously considered by the Board. It is well established, however, that the Board's award of work in a 10(k) proceeding is not open to review in a related unfair labor practice proceeding. *National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (NABET) (Metromedia,*

Inc.), 230 NLRB 75, 77 (1977). As I have concluded that the Board was presented with evidence regarding election evening news gathering and live broadcasting in the 10(k) proceeding, and as the work of gathering election news with the minicam falls within the Board's award in the 10(k) hearing—"the work of news gathering by use of the . . . electronic camera"—Respondent's contention that it would be a denial of due process to deny it another 10(k) hearing to resolve the issue raised herein is rejected, and its motion to dismiss on that basis is denied. While, as Respondent argues in its answer, a complaint based on the act of filing the grievances on June 6 and December 3, 1978, would be barred by Section 10(b), its conduct in maintaining the grievances and seeking through its lawsuit to compel the Employer to submit them to arbitration is within the 10(b) period. Accordingly, its argument that the instant charge should be dismissed as barred by Section 10(b) is without merit. As stated by the Board in 230 NLRB at 78, "by continuing to demand arbitration of a dispute already settled by the Board in a decision taking precedence over that of an arbitrator, NABET was attempting to undermine the Board's authority to resolve jurisdictional disputes, thus further evidencing its intention not to be bound by the Board's award." Accordingly, I conclude and find that Respondent has violated Section 8(b)(4)(ii)(D) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The conduct of Respondent, as set forth above, occurring in connection with Metromedia's operations, has a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(9)(ii)(D) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and the entire record, I hereby make the following:

CONCLUSIONS OF LAW

1. Respondent, National Association of Broadcast Employees and Technicians, AFL-CIO, CLC, and International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada are labor organizations within the meaning of Section 2(5) of the Act.

2. Metromedia, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By failing and refusing to honor or abide by the Board's Decision and Determination of Dispute in Case 31-CD-161, by filing and maintaining grievances, and by filing a lawsuit in the United States District Court, praying for an order compelling Metromedia, Inc., to submit said grievances to arbitration, with an object of forcing of requiring Metromedia, Inc., to assign to employees represented by or members of Respondent, rather to employees represented by members of International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, the work of gathering election news with the minicam, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(ii)(D) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]